



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
ALBERT E. AND DONA B. NEUDAUER)

For Appellants: Albert E. Neudauer,
in pro. per.

For Respondent: Daniel A. Borzoni
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Albert E. and Doria B. Neudauer against a proposed assessment of additional personal income tax in the amount of \$233.04 for the year 1978.

Appeal of Albert E. and Dona B. Neudauer

The issue for determination is whether respondent properly assessed appellants for California income tax on royalties received from property located in New Mexico.

In 1978, California residents Albert E. and Dona B. Neudauer earned \$3,503 in royalties from Texaco, Inc. (Texaco), on property they owned in New Mexico. Texaco withheld \$296.12, and paid appellants a net of \$3,206.88. Upon discovering that appellants had not paid California tax on this income, respondent issued a proposed assessment on the \$3,503 in gross royalties. Appellants' protest was denied and this appeal followed.

Section 17041 of the Revenue and Taxation Code provides that a resident's entire taxable income, from whatever source derived, is subject to tax. Since California includes royalties in income (Rev. & Tax. Code, § 17071, subd. (a)(6)), appellants' royalties from New Mexico are taxable by California.

Appellants contend that they owe no tax upon the royalties because Texaco already withheld \$296.12 from their earnings. They submit in evidence a federal Information Return 'Form 1099 for 1978, on which Texaco reported the net and gross royalty sums stated above. Appellants argue that Texaco must have used the amount withheld to pay their California income tax. However, they have presented no evidence to indicate that Texaco actually did so.

Appellants argue, in the alternative, that Texaco might have used the \$296.12 to pay out-of-state tax on the royalties. They contend that if this is true, then they are entitled to a tax credit under Revenue and Taxation Code section 18001.

Under certain circumstances, section 18001 permits a California resident to obtain a credit against California tax liability for net income taxes, imposed by and paid to another state, on income which is also taxable by California. Prior to obtaining this credit, taxpayers must demonstrate that the applicable net income taxes were in fact paid to the other state. (Cal. Admin. Code, tit. 18, reg. 1.8001, subd. (a)(2).) Again, appellants have not shown in any way that they or Texaco paid any applicable out-of-state income taxes on the royalties.

Appeal of Albert E. and Dona B. Neudauer

It is well settled that a determination by the Franchise Tax Board is presumed correct, and that the taxpayer bears the burden of proving it erroneous. (Appeal of Robert C. Sherwood, Deceased, and Irene Sherwood, Cal. St. Bd. of Equal., Nov. 30, 1965.) Since appellants have provided no evidence to prove that the proposed assessment was incorrect, we must sustain respondent's action.

Appeal of Albert E. and Dona B. Neudauer

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Albert E. and Dona B. Neudauer against a proposed assessment of additional personal income tax in the amount of \$233.04 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of February, 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Reilly, Mr. Dronenburg, and Mr. Nevins present.

William M. Bennett, Chairman

George R. Reilly, Member

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

_____, Member